

Land tax exemptions available to trusts

Land is often acquired by trusts for a variety of reasons including asset protection and the availability of a 50% capital gains discount for land held for more than 12 months.

Land tax (**LT**) as it applies to trusts in Queensland can be misunderstood, particularly regarding the context in which separate assessments will issue, the availability of exemptions, including:

- the home exemption
- the primary production exemption.

Potential issues for landowners

With improved data matching techniques, the Office of State Revenue (**OSR**) is increasingly contacting trustee landowners that are claiming exemptions to verify if exemptions are properly being claimed.

When trustees are acquiring land in Queensland on trust they and their advisors should seek expert land tax advice to ensure they are aware of the requirements to properly claim potential exemptions.

If trusts are not disclosed on title records, then this does not necessarily preclude land being exempt.

What is necessary is an analysis to determine if land is being held on trust and if so, identifying who the beneficiaries are for land tax purposes, which will determine the availability of the home exemption and/or the primary production exemption.

When is a trust recognised for LT?

Any trustee of a trust established by a deed of trust falls within the definition of 'trustee' for land tax purposes. However the statutory definition of 'trustee' is sufficiently broad to include trusts established by court order or operation of law, deceased estates and persons administering or controlling land affected by express or implied trust.

If a trust exists, then a trustee must be assessed separately for any land held on trust, compared to any land held in a personal capacity.

Tax types

- land tax

Tax practice areas

- tax advisory services
- tax audits and reviews
- tax objections

Single LT assessments will however issue in instances where multiple trusts have a common trustee – if the beneficiaries of each trust are identical.

Usually whether land is held on trust will be reflected on title. However this may not always be the case – for instance due to administrative errors in completing the relevant transfer forms. If a trust is not reflected on title, then consideration still needs to be given to determine whether the legal owner falls within the definition of 'trustee' for LT purposes regarding any parcels of land. This includes determining whether the land is held for any express or implied trust.

Beneficiaries for LT purposes

An inherent feature of discretionary trusts is that the trustee will have a broad discretion to make distributions to various classes of beneficiaries.

Whilst the trust deed will name some beneficiaries and identify further classes of beneficiaries to whom distributions can be made.

The term 'beneficiary' however is strictly defined for LT purposes to refer to a person entitled to a beneficial interest in land, or income derived from land that is subject to a trust.

Regarding beneficiaries of discretionary trusts, the LT Act limits beneficiaries to be any person who the trustee has distributed income or assets to during the 12 months immediately prior to a liability date. This is referred to as an exercise of the trustee's 'power of appointment', as the trustee is 'appointing' the income or assets of the trust to beneficiaries.

It is these statutory definitions of 'beneficiary' that need to be carefully considered when

claiming either the home exemption or the primary production exemption for LT purposes.

Exemptions – beneficiaries

The home exemption and primary production exemption in Queensland turn on ownership and use of land.

In determining ownership, where land in Queensland is held by a trustee then consideration must be given to who the beneficiaries of the trust are for LT purposes.

Whilst any deed of trust may be useful in determining beneficiaries, it is important to remember that for LT purposes the concept of beneficiary links solely to in whose favour the trustees have exercised a power of appointment in the 12 months prior to the liability date (30 June).

Home exemption

Where a home is used by beneficiaries of a trust as their home, then the trustee should document its decision to allow beneficiaries to use the property as their home. In documenting the decision, care must be taken to ensure capital gains tax is not inadvertently triggered.

Where a trust owns income producing property other than the land used as a home, then any income distributions need to be to beneficiaries who reside in the property, otherwise the home exemption will not be available.

This is because the home exemption will only apply if all of the beneficiaries, in whose favour powers of appointment have been exercised in the previous 12 months, use the land as their home.

For instance, if a trustee holds income producing property in addition to the property used as a home and distributes income to a corporate beneficiary, then the home exemption is not available. However if the income is distributed to individuals who use trust property as their home then the home exemption is still potentially available.

Primary production exemption

For the primary production exemption to apply to land in Queensland it must be demonstrated:

- the land (or part of land) is used solely for a business of agriculture
- the only beneficiaries of the trust are individuals (other than trustees or absentees), Australian registered companies or charitable institutions.

Trustees should be aware of this requirement when exercising any decisions in favour of potential beneficiaries. For instance if the trustee intends to be eligible for the primary production exemption, then distributions of income should not be made to non-resident individuals – who are absentees for land tax purposes.

Further assistance

We can provide assistance in providing advice to trustees and their advisors:

- prior to the acquisition of land
- as part of a general review of a trustee's landholdings, including in response to OSR contact.

We have experience in reviewing and applying the law, including in:

- identifying and documenting land being held subject to trust obligations
- making submissions to the OSR to ensure exemptions are recognised (including in the form of objections if assessments have already issued).

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